CONNECTICUT
TRIAL LAWYERS
ASSOCIATION

Proposed House Bill 6916
Public Hearing: 2-26-19

TO: MEMBERS OF THE LABOR AND PUBLIC EMPLOYEES COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: FEBRUARY 26, 2019

RE: SUPPORT OF PROPOSED HOUSE BILL 6916 AA EXPANDING REMEDIES AND POTENTIAL LIABILITY FOR UNREASONABLY CONTESTED OR DELAYED WORKERS' COMPENSATION CLAIMS

The subject matter of Proposed House Bill 6916 brings to the committee's attention a problem facing too many injured workers as they try to navigate the workers' compensation system, that of endless undue delay in treatment, payment and decisions.

The attached proposed language allows injured workers to claim damages caused by unfair insurance practices by workers' compensation insurers. This bill reverses the Connecticut Supreme Court decision in *DeOliveira v. Liberty Mutual Ins. Co.*, 273 Conn. 487 (2005), which immunizes workers' compensation insurers, self-insured employers and third party administrators for negligent and bad faith claim handling practices when compensation payments and medical treatments are unjustifiably delayed and wrongfully withheld. In *DeOliveira* the Court held that the legislature provided for penalties under the workers compensation act and stated in part that "moral aversion to the insurer's acts" does not justify "interference with what is essentially a policy choice of the Legislature". *DeOliveira v. Liberty Mut. Ins. Co.*, 273 Conn. 487, 501 (Conn. 2005). However the penalties provided in the act, in essence interest on delayed payments, petty fines and attorney fees, are woefully inadequate to deter bad claims practices and to fairly compensate the injured worker for the harms caused. Furthermore, these penalties are seldom imposed by the Commissioners and, when imposed, are usually minimal ($300 to $1,000) providing no deterrent effect to discourage the unfair insurance company practices.

This immunity from claims has encouraged insurers to continue to substitute their own bureaucratic judgment for that of treating physicians and deny medical treatment to their financial benefit. In short, insurance profits over needed medical care. The harmful and morally bankrupt result to the injured workers is denial of timely and necessary medical treatment, thereby extending suffering, preventing timely recovery from injury and delaying return to work. At worse the absence of timely medical treatment results in irreversible and debilitating permanent injury. Moreover, the injured worker is forced to look for alternative means to cover the cost of necessary medical care often shifting medical costs to group health insurers, Medicaid and Medicare. The legislature should be aware and consider this inappropriate cost shifting to government subsidized healthcare. In addition, delay in wage replacement benefits leaves injured workers with unpaid bills, evictions and foreclosure.

When the Workers' Compensation Act was enacted over 100 years ago, employees agreed to forego their right to seek redress in court against their employers for workplace injuries in exchange for speedy access to health care and replacement of lost wages.

While this enactment has been referred to as the "grand bargain", such grandness fades for many workers who are faced with undue delay in access to health care and compensation. The injured worker is hardly to blame for this, and neither are the employers. Employers want their workers given prompt and appropriate medical care so they may be returned to work after an injury.

The attached language would not allow a worker to sue their employer for a workplace injury. That is not the purpose and should not be seen as such. Rather, the problem lies with insurance carriers and third party administrators. The only form of redress sought with this language would be against those entities for the commission of unfair insurance practices.

If these insurers or administrators used the type of delay tactics and unfair denials in any other avenue (health care insurance, car insurance, etc.), they would be subject to a suit under the state's Unfair Insurance Practices Act. Compensation insurance carriers are the only insurers shielded from unfair insurance practices. They should not enjoy the protection the employer gets under the grand bargain for their own unfair practices when administering the insurance which was meant to give speedy healing and resolution to workplace injuries!

Language in this bill **protects the employer from increased rates or penalties** from their insurance company should a judgment be entered against them.

Without this language:
Injured workers will continue to receive untimely medical treatment, preventing them from recovering from their injury and delaying their return to work. Even worse are the situations in which the absence of timely treatment has resulted in further irreversible debilitating medical conditions.

Medical costs will continue to be shifted to group health insurers, Medicaid and Medicare. The legislature should be aware of this inappropriate cost shifting to government subsidized health insurers.
Delay in wage replacement benefits will especially hurt many injured workers who live paycheck to paycheck, causing unpaid bills, evictions and foreclosure.
This change is necessary to deter insurance companies from delaying compensation benefits and substituting bureaucratic judgment over a treating medical doctor's opinion for financial profit. The current penalties are so small and so seldom imposed that it is financially beneficial for insurance companies to continue bad and unfair claims practices.

WE URGE YOU TO VOTE TO DRAFT HB 6916 TO INCLUDE THE ATTACHED LANGUAGE.
Thank you.